

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN HOLLAWELL	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	
FRANK D. GILLIS, et al.,	:	
Respondents.	:	No. 01-3526

MEMORANDUM AND ORDER

J. M. KELLY, J.

NOVEMBER , 2002

Presently before the Court are Chief United States Magistrate Judge James R. Melinson's Report and Recommendation and objections thereto filed by pro se Petitioner John Hollawell ("Petitioner").¹ Respondents are Frank D. Gillis, SCI - Coal Superintendent and Philadelphia County Court of Common Pleas Judge Carolyn E. Temin (collectively, the "Respondents"). Petitioner initially filed his petition as a "Petition for Writ of Recusal of Judge Carolyn E. Temin" in the Middle District of Pennsylvania, and consistent with that Court's order, his petition was construed as a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 and transferred to this District. In accordance with 28 U.S.C. § 636 and Local Rule of Civil Procedure 72.1, this Court referred the petition to Chief Magistrate Judge James R. Melinson for a Report and

¹ At the time Petitioner filed his petition in May 2001, he was incarcerated at the State Correctional Institution in Coal Township, Pennsylvania. In December 2001, Petitioner was transferred to Luzerne ICCF in Philadelphia, Pennsylvania, where he remains today.

Recommendation. Chief Magistrate Judge Melinson recommended that this Court dismiss Petitioner's petition with prejudice and Petitioner filed objections. For the reasons that follow, this Court overrules Petitioner's objections, approves and adopts Chief Magistrate Judge Melinson's Report and Recommendation, and **DISMISS WITH PREJUDICE** Petitioner's petition.

I. BACKGROUND

On June 2, 1989, Petitioner was convicted of corrupt organizations, two counts of bribery and criminal conspiracy for his role in a scheme to bribe Philadelphia Police Officers in order to obtain information regarding illegal gambling activities and to solicit police protection for various gambling establishments. Philadelphia Court of Common Pleas Nos. 233-37, 2456, November Term 1987. Petitioner was sentenced to five (5) to twenty (20) years' imprisonment on the corrupt organization conviction with concurrent terms imposed for the conspiracy and bribery convictions. On October 18, 1990, the Superior Court of Pennsylvania affirmed judgment of his sentence on direct appeal. Commonwealth v. Hollawell, 584 A.2d 1047 (Pa. Super. 1990). On October 17, 1991, the Supreme Court of Pennsylvania denied allocatur. Commonwealth v. Hollawell, 600 A.2d 951 (Pa. 1991). Petitioner was also convicted of bribery, perjury and criminal conspiracy arising from two civil lawsuits, to which he was

sentenced on April 2, 1990 to a consecutive term of 18 to 36 months' imprisonment. Thereafter, Petitioner filed multitudinous petitions and motions in both federal and state court collaterally attacking these convictions.²

The instant petition was filed on May 24, 2001 in the Middle District of Pennsylvania as a "Petition for Writ of Recusal." Pursuant to that Court's order, the petition was construed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and transferred to this District. Hollawell v. Gillis, et al., No. 01-CV-922 (M.D. Pa. July 13, 2001) (M. Muir, J.). The instant matter was then opened in this Court as a § 2254 petition. However, it appearing from the petition that Petitioner sought neither immediate nor speedier release from imprisonment, this Court issued a Memorandum and Order on January 2, 2002 advising Petitioner that he had four options for

² The procedural history of this case through 1994 is set forth in Hollawell v. Dragovich, et al., No. 94-CV-6321 (E.D. Pa. Aug. 29, 1995)(R.F. Kelly, J.), which chronicles Petitioner's multiple court actions, including six petitions for a writ of habeas corpus. Petitioner did not obtain federal relief in the District Court or in the United States Court of Appeals for the Third Circuit as the result of any of these filings.

On March 9, 1998, Petitioner filed a petition for writ of habeas corpus that was dismissed for failure to file the petition on the correct forms. Hollawell v. Gillis, et al., 98-CV-1230 (E.D. Pa. July 14, 1998) (R.F. Kelly, J.). Since conclusion of that case, and in addition to the instant petition, Petitioner has filed six other actions, including two habeas petitions, one miscellaneous matter, and three civil rights complaints. Each of these other proceedings was either dismissed by the Court or withdrawn by Petitioner.

proceeding with his Petition for Writ of Recusal and offered Petitioner a period of 45 days to choose one. Hollawell v. Gillis, et al., No. 01-3526 (E.D. Pa. Jan. 2, 2002) (J.M. Kelly, J.). On February 8, 2002, Petitioner filed his response, asking the Court to rule on his pleading as filed, specifically as a petition for writ of habeas corpus pursuant to § 2254. Subsequently, Petitioner has filed a variety of motions, including two motions to amend his petition.

This Court referred the matter to Chief United States Magistrate Judge Melinson for a Report and Recommendation. In accordance with this Court's request, on October 18, 2002, Chief Magistrate Judge Melinson recommended that the instant petition be dismissed with prejudice, consistent with Petitioner's § 2254 petitions already considered by Judge Robert F. Kelly.³ Petitioner timely filed his objections to Chief Magistrate Judge Melinson's Report and Recommendations.

³ Petitioner's instant petition is one of three similar petitions transferred to this District from the Middle District of Pennsylvania within a one-month period. The instant petition was assigned to Judge James McGirr Kelly, while the other two were assigned to Judge Robert F. Kelly. Each of the petitions raise essentially the same assertions of judicial misconduct, a pattern repeated throughout the tortured procedural history of Petitioner's filings with this Court. Judge Robert F. Kelly summarily dismissed Petitioner's petitions with prejudice for failure to state a cognizable claim. See Hollawell v. Gillis, et al., No. 01-CV-4001 (E.D. Pa. Nov. 7, 2001) (R.F. Kelly, J.); Hollawell v. Gillis, et al., No. 01-4064 (E.D. Pa. Nov. 6, 2001) (R.F. Kelly, J.).

II. DISCUSSION

This Court reviews de novo those portions of the Magistrate Judge's Report and Recommendation to which specific objections have been made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Petitioner timely filed his objections to Chief Magistrate Judge Melinson's Report and Recommendation, but fails to raise specific objections and merely rehashes the claims contained in his failed petition. Because Petitioner is pro se, this Court will nevertheless attempt to discern from Petitioner's conclusory statements his specific objections to Chief Magistrate Judge Melinson's Report and Recommendation.

First, Petitioner objects generally to Chief Magistrate Judge Melinson's recommendation for failing to address Petitioner's claim that the state trial judge imposed a lengthy term of incarceration and sent unfavorable recommendations to the Pennsylvania Board of Probation and Parole because he refused the state trial judge's alleged sexual advances. The only evidence Petitioner proffered in support of his claim are two newspaper articles critical of the state trial judge for giving lenient sentences. Because Petitioner provides no other support in any of the numerous motions filed with this case this Court finds Petitioner's claim to be meritless.

Second, Petitioner objects to Chief Magistrate Judge Melinson's denial of leave to file amended petitions. In this

objection, Petitioner does not specifically object to the Report and Recommendation's content, which would require this Court's de novo review. Rather, Petitioner appears to object to Chief Magistrate Judge Melinson's October 17, 2002 Order, which sets forth rulings on Petitioner's nondispositive motions. This Court will review a magistrate's ruling on nondispositive motions under a clearly erroneous or contrary to law standard. See 28 U.S.C. § 636(b)(1)(A).

The Federal Rules of Civil Procedure apply to motions to amend habeas petitions. See Riley v. Taylor, 62 F.3d 86, 89 (3d Cir. 1995). Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend his pleading once as a matter of course at any time before a responsive pleading is filed. Fed. R. Civ. P. 15(a). In this case, however, Petitioner twice sought to file proposed amendments to his petition. Thus, that portion of Rule 15(a) is invoked providing that when amendment as a matter of course is not permitted, "a party may amend the party's pleadings only by leave of court [which] leave shall be freely given when justice so requires." See id.

The United States Supreme Court has indicated that leave to amend should be freely given unless amendment would be futile. Forman v. Davis, 371 U.S. 178, 182 (1962). Upon review of both of Petitioner's March 12, 2002 and May 3, 2002 proposed amendments, it is clear that Petitioner merely restates the same

facts contained in the original petition, and as such, his proposed amendments are futile. Moreover, Petitioner's instant petition is similar to two other petitions filed by Petitioner, all within a one-month time frame, which were docketed with Judge Robert F. Kelly and summarily dismissed with prejudice for failure to state a cognizable claim. See Hollawell v. Gillis, et al., No. 01-CV-4001 (Nov. 7, 2001) (R.F. Kelly, J.); Hollawell v. Gillis, et al., No. 01-4064 (Nov. 6, 2001) (R.F. Kelly, J.). Chief Magistrate Judge Melinson's denial of Petitioner's motions to amend is neither clearly erroneous nor contrary to law.

Finally, Petitioner objects to Chief Magistrate Judge Melinson's denial of his motion to conduct an evidentiary hearing, another ruling contained in Chief Magistrate Judge Melinson's October 17, 2002 Order. Section 2254(e)(2) was enacted as part of the Anti-Terrorism and Effective Death Penalty Act, which "amended the federal habeas statute in such a way as to limit the availability of new evidentiary hearings on habeas review." Campbell v. Vaughn, 209 F.3d 280, 286 (3d Cir. 2000), cert. denied, 531 U.S. 1084 (2001). Section 2254(e)(2) provides that if an applicant has failed to develop the factual basis of a claim in state court proceedings, an evidentiary hearing shall not be held unless the applicant shows that:

- (A) the claim relies on -
 - (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2254(e)(2). It does not appear that a state court has ever addressed the merits of Petitioner's claim, and Petitioner makes no showing sufficient to comply with section 2254(e)(2)'s requirements for an evidentiary hearing. Chief Magistrate Judge Melinson was thus correct in denying Petitioner an evidentiary hearing.

III. CONCLUSION

For the foregoing reasons, this Court overrules Petitioner's objections, and approves and adopts Chief Magistrate Judge Melinson's Report and Recommendation. Accordingly, Petitioner's Petition for Writ of Habeas Corpus is **DISMISSED WITH PREJUDICE**.

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O R D E R

AND NOW, this day of November, 2002, upon careful and independent consideration of the Petition for Writ of Habeas Corpus filed by pro se Petitioner, John Hollawell ("Petitioner") (Doc. No. 1); United States Magistrate Judge James R. Melinson's Report and Recommendation (Doc. No. 33); and Petitioner's Objections thereto (Doc. No. 34), it is **ORDERED** that:

1. Petitioner's Objections to Chief U.S. Magistrate Judge James R. Melinson's Report and Recommendation are **OVERRULED**.
2. United States Magistrate Judge Melinson's Report and Recommendation is **APPROVED** and **ADOPTED** as supplemented by the foregoing memorandum.
3. Petitioner's Petition for Writ of Habeas Corpus is **DISMISSED WITH PREJUDICE**.
4. Because Petitioner has failed to make a substantial showing of the denial of a constitutional right, there is no basis for the issuance of a certificate of appealability.

BY THE COURT:

JAMES MCGIRR KELLY, J.